BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Calling Party Pays Service Offering	)	WT Docket No. 97-207
in the Commercial Mobile Radio Services	)	

OPPOSITION TO PETITION FOR RECONSIDERATION OF THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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The Cellular Telecommunications Industry Association ("CTIA")[1] hereby submits its Opposition to the petition for reconsideration[2] submitted in the above captioned proceeding.[3]

I. INTRODUCTION AND SUMMARY

The Ohio Commission in filing its petition for reconsideration and clarification challenges the Commission's declaratory ruling that CPP is a CMRS service, and takes issue with the Commission's intimations in the Notice that it can impose national standards for CPP to the exclusion of state-specific regulation. Even though the Ohio Commission "share[s] the FCC's apparent view that CMRS should generally be subject to little regulation," and "generally

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1 CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including 48 of the 50 largest cellular and broadband personal communications service ("PCS") providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

2 Petition for Reconsideration and Clarification and Further Comments on Jurisdictional Issues Submitted by the Public Utilities Commission of Ohio in WT Docket No. 97-207 (filed Aug. 16, 1999) ("Ohio Commission Petition").

3 In the Matter of Calling Party Pays Service Offering in the Commercial Mobile Radio Services, *Declaratory Ruling and Notice of Proposed RuleMaking*, WT Docket No. 97-207, FCC 99-137 (rel. July 7, 1999) ("Notice").

endorse[s] a similar approach to CPP as is being considered in the NPRM,"[4] nonetheless, it objects to any jurisdictional determination that places CPP outside the reach of the states.

Notably, the sole determination that the Commission has made to date -- and the only decision that is properly subject to reconsideration at this time -- is that CPP is CMRS. CTIA opposes the Ohio Commission's request that the Commission reconsider its declaratory ruling. Simply stated, the Ohio Commission has not adequately demonstrated why the Commission should reconsider its reasoned determination of the regulatory status of CPP.

CTIA also objects to the Ohio Commission's attempt to seek reconsideration of other CPP jurisdictional issues raised in the Notice. The Ohio Commission apparently has mistaken the Commission's attempt to seek comment on additional jurisdictional issues surrounding CPP as a judgment on the merits. To the contrary, the Commission has made no final determinations outside of its declaratory ruling. For this reason, the Commission need not entertain these requests. Of course, CTIA believes that the correct legal result ultimately is for the Commission to preclude states from regulating CPP.

II CONTRARY TO THE OHIO COMMISSION'S ASSERTIONS, CPP IS A CMRS SERVICE.

A. CPP Is Not Merely Billing And Collection, But Rather A Form Of CMRS.

The Ohio Commission lists several reasons why the Commission should have concluded that CPP is a billing option as opposed to a CMRS service. Among other things, it claims that CPP merely creates new charges, not a new service. It also contends that the Commission's tentative conclusion in the Notice that CPP-like service is not CMRS applies with equal force

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[4] Ohio Commission Petition at 4.

here; that is, in both cases, the caller is a customer of the LEC and not of the CMRS provider, and the service being provided is billing and not CMRS. Moreover, the Ohio Commission claims that the CMRS provider has added an additional condition precedent to its termination of traffic under existing LEC-CMRS interconnection agreements for wireline calls placed to CMRS customers. In effect, the caller is being forced to become a transactional customer of the CMRS carrier before the call will be terminated. Finally, the Ohio Commission contends that CPP does not meet the definition of CMRS under the Commission's rules because it is not truly "interconnected service" as defined by the Commission's rules.[5] The Commission should reject each of these assertions.

The Commission has already addressed and dismissed the Ohio Commission's argument that CPP is a billing service. As the Commission correctly noted, CPP meets all of the statutory requirements for CMRS: it is a mobile service that will be commercially available to the public; the underlying call will be for-profit and interconnected with the public switched telephone network.[6] CTIA agrees with the Commission's assessment that a CPP call is like other CMRS calls, but for the fact that the call is paid for by the calling party. As with collect calls, the party paying for the charge has no pre-existing customer relationship or service contract with the carrier that ultimately recoups the charges for the service. This lack of a pre-existing relationship, though, does not render a collect call a non-telecommunications service.

Similarly, to classify CPP calls as merely a billing and collection service would be patently inappropriate. It fails to recognize the indisputable fact that this service requires that a

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5 See Ohio Commission Petition at 6-9.

6 Notice at ¶¶ 14-17.

CMRS call be made and completed. More significantly, it also fails to give sufficient credence to the Supreme Court's analysis that billing an end-user for a telecommunications service is part and parcel of rate regulation.[7] The Commission's reasonable interpretation of its enabling statute should prevail notwithstanding the Ohio Commission's objections.[8]

The rest of the Ohio Commission's arguments are similarly faulty. While the Ohio Commission is correct to note that CPP calls and CPP-like calls (where charges for airtime are recovered through interconnection charges) are similar, in fact, both should be considered CMRS as opposed to billing services.[9] In both cases, the caller is reimbursing the CMRS carrier either directly or indirectly for the charges associated with the call to a wireless customer. In both situations, the caller is a "customer" of the CMRS provider just like casual callers are customers of the underlying service provider. Thus, the proper conclusion is to treat both forms of CPP calls as CMRS, as opposed to treating both as a form of non-CMRS billing service.

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7 The Supreme Court has noted in the context of the filed-rate doctrine that the setting of rates involves the provision of services and billing. American Telephone and Telegraph Co. v. Central Office Telephone, Inc., 524 U.S. 214, 223-224 (1998).

8 See Nat'l Ass'n of Greeting Card Publishers v. U.S. Postal Service, 462 U.S. 810, 820-821 (1982) ("An agency's interpretation of its enabling statute must be upheld unless the interpretation is contrary to the statutory mandate or frustrates Congress' policy objectives."); see also Chevron U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 837, 844 (1984) ("a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency").

9 See Comments of the Cellular Telecommunications Industry Association in WT Docket No. 97-207, at 7-10 (filed Sep. 17, 1999) (explaining how the Commission should treat CPP-like calls as CPP because, among other things, (1) both calls meet the definition of CMRS; (2) the caller in a CPP-like call is still ultimately responsible for additional charges, although the form of reimbursement is indirect; and (3) the CMRS provider is ultimately reimbursed for the additional charges associated with the call above and beyond termination charges) ("CTIA Comments").

The Ohio Commission's additional claim about CPP's effect on interconnection agreements also misses the mark. In effect, the Ohio Commission believes that CPP will create a non-bargained-for condition precedent on existing LEC/CMRS interconnection agreements. Assuming for argument's sake the correctness of the Ohio Commission's claim,[10] this proves nothing. The Ohio Commission, by its petition, is required to demonstrate that CPP is not CMRS. The fact that current LEC/CMRS interconnection agreements may be affected by the introduction of CPP services[11] is irrelevant to the Commission's declaratory ruling. To the extent that the Ohio Commission by its argument suggests that the states have an overriding interest in regulating LEC/CMRS interconnection compensation agreements (that outweighs the adoption of CPP rules) by virtue of their regulation of the LEC, the Eighth Circuit has already determined the contrary.[12]

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[10] In fact, the Ohio Commission is wrong about CPP creating a new and significant condition precedent to CMRS providers' termination of traffic under existing interconnection agreements. With CPP, the CMRS subscriber elects whether and under what conditions it will receive calls and nothing more. The underlying interconnection agreement is no more affected by CPP than it is by LEC services such as call blocking.

[11] If the Ohio Commission is concerned that current LEC/CMRS interconnection agreements may be null and void because of CPP, this argument is more appropriately raised in comments to the Notice. It simply has no bearing on the issue of whether CPP is a CMRS service.

[12] Section 332 of the Communications Act provides the jurisdictional basis for the Commission to establish compensation mechanisms for the transport and termination of traffic between LECs and CMRS carriers. The Commission's jurisdiction pursuant to Section 332 over interconnection rates is sufficiently comprehensive to include CPP charges recovered through interconnection agreements. See CTIA Comments at 9 (citing Iowa Utils. Bd. v. F.C.C., 120 F.3d 753, 800, n. 21 (8th Cir. 1997), rev'd on other grounds sub nom., AT&T v. Iowa Utils. Bd., 525 U.S. 366 (1999) ("Because Congress expressly amended section 2(b) to preclude state regulation of entry of and rates charged by . . . [CMRS] providers, see 47 U.S.C. §§ 152(b) (exempting the provisions of section 332), 332(c)(3)(A), and because section 332(c)(1)(B) gives the FCC the authority to order LECs to interconnect with CMRS carriers, we believe that the Commission has the

Finally, the Commission should also reject the Ohio Commission's claim that CPP is not an "interconnected service"[13] under Section 20.3 of its rules.[14] The Ohio Commission attaches undue significance to its belief that with CPP only the calling party -- and not the CMRS provider or the CMRS subscriber -- determines whether calls are completed. It presumes that such a situation forecloses the CMRS customer from having service interconnected with the public switched telephone network ("PSTN") because the CMRS subscriber cannot in fact "receive communications from all other users on the public switched network"[15] consistent with the Commission's definition. The Ohio Commission's argument fails to recognize that the Commission's rule merely requires the technical "capability to communicate to or receive" calls. If a CPP call is not completed by the caller, this is not attributable to a technical inability of the called party to receive the call, but rather a decision on the part of the calling party not to continue. As the Commission's rule makes clear, technical capability is the dispositive

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authority to issue [interconnection] rules of special concern to the CMRS providers, i.e., 47 C.F.R. §§ 51.701, 51.703, 51.709(b), 51.711(a)(1), 51.715(d), and 51.717. . .")).

13 The Commission's initial determination that CPP meets the definition of an "interconnected service," Notice at ¶ 16 and n. 37, must be given controlling weight unless plainly erroneous or inconsistent with Commission regulations. See Thomas Jefferson Univ. v. Shalala, 512 U.S. 504, 512 (1994) (When an agency formally construes its own rules, its "'interpretation must be given controlling weight unless it is plainly erroneous or inconsistent with the regulation'").

14 47 C.F.R. § 20.3.

15 Ohio Commission Petition at 9 (citing 47 C.F.R. § 20.3). Under Section 20.3, an "interconnected service" is defined as a service that "is interconnected with the public switched network, or interconnected with the public switched network through an interconnected service provider, that gives subscribers the capability to communicate to or receive communication from all other users on the public switched network . . ." (emphasis added). Notably, under the Commission's definition, the CMRS subscriber could have only the ability to make (and not receive) calls through the PSTN, and yet still meet the definition of an interconnected service.

requirement.[16] Moreover, the Ohio Commission inappropriately assumes that the CMRS subscriber lacks any choice in the matter. In fact, by initially electing the CPP service option, the CPP subscriber affirmatively chooses to receive calls in this manner. The CPP subscriber has made the voluntary decision not to receive incoming calls unless the calling party is willing to accept the associated charges. This hardly renders CPP service outside of the Commission's definition of a CMRS "interconnected service."

B. Even If CPP Were Not CMRS, The Commission Can Still Prohibit Inappropriate State Regulation.

Assuming for the sake of argument that CPP is not CMRS, but rather a form of billing and collection service, this does not necessarily provide the Ohio Commission with concurrent regulatory jurisdiction. If CPP were considered merely a billing and collection service, it would still be a telecommunications service.[17] Billing and collection for a call, whether wireline or wireless, is part of any telecommunications service. Labeling CPP as a non-CMRS telecommunications service merely renders Section 332 -- but not the Communications Act of 1934, as amended ("Communications Act") -- inapplicable. This means that the states would be unable to take advantage of the explicit "other terms and conditions" reservation of authority in

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16 Similarly, the Communications Act does not require that interconnected service be universally available. Rather, interconnected service need only be available to "such classes of eligible users as to be effectively available to a substantial portion of the public as specified by regulation by the Commission." 47 U.S.C. § 332(d)(1).

17 Notably, the type of billing and collection at issue in CPP is not inter-carrier "billing and collection" service that has already been deregulated by the Commission. See Detariffing of Billing and Collection Services, *Report and Order*, 102 FCC 2d 1150 (1986). Rather, it concerns the billing relationship between a carrier and its end user customer -- a relationship that is subject to regulatory scrutiny, as recently evidenced by the Commission's adoption of truth-in-billing regulations.

Section 332.[18] The Commission, though, still would retain jurisdiction over CPP services.[19] Therefore, it could preempt inappropriate state regulation under other provisions of the Communications Act. For example, Sections 253(a) and (d) grant the Commission authority to preempt state regulation that impedes the ability of a carrier to provide telecommunications services.[20] The Commission could exercise this authority to preempt regulation of CPP that bans or effectively prohibits a CMRS carrier's offering of CPP services to its customers, regardless of whether the ban involves interstate or intrastate CPP offerings.

III. THE COMMISSION SHOULD REJECT THE OHIO COMMISSION'S ADDITIONAL REQUESTS FOR CLARIFICATION OF THE REMAINING CPP JURISDICTIONAL ISSUES AS PREMATURE.

The Ohio Commission commits both procedural and legal error in filing for additional clarification of the Commission's view on CPP jurisdictional issues. Procedurally, the Ohio Commission has sought reconsideration of a non-final action; that is inappropriate. More fundamentally, the Ohio Commission's legal analysis of the remaining CPP jurisdictional issues is incorrect. Contrary to its assertions, the Commission is obligated under the Communications Act to prohibit additional or contrary state regulation of the CPP notification message.

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18 47 U.S.C. § 332(c)(3)(A).

19 As noted below, the Commission may preempt inappropriate state regulation of CPP under the Section 2(b), 47 U.S.C. § 152(b), impossibility jurisprudence. Because the calling party does not know the location of the called CMRS customer (and the CMRS customer may be local or in another state when the call is received), such CPP calls are rendered jurisdictionally mixed for purposes of a Section 2(b) preemption analysis.

20 See 47 U.S.C. § 253(a) ("No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.").

A. The Ohio Commission Mistakenly Presumed That The Commission's Request For Comment On CPP Notification Jurisdictional Issues Reflects A Final Judgment On The Merits.

By filing for reconsideration the Ohio Commission has jumped the gun. That is, to the extent that it seeks clarification of jurisdictional issues beyond that decided in the declaratory ruling, its request is premature. According to the Commission's rules, petitions for reconsideration are appropriate for "final actions" taken by the Commission.[21] Thus, tentative conclusions reached in the context of a notice of proposed rulemaking are not ripe for reconsideration.[22]

Moreover, the Ohio Commission need not have filed the petition to protect its ability to appeal any final decision by the Commission regarding CPP jurisdictional issues.[23] As noted in the Commission's rules, the "filing of a petition for reconsideration is not a condition precedent to judicial review of any action taken by the Commission."[24] Therefore, the filing of the reconsideration petition for this purpose was unnecessary and inappropriate.

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21 See 47 C.F.R. §§ 1.106 (petitions for reconsideration); 1.429 (petitions for reconsideration in rulemaking proceedings).

22 See Investigation of Special Access Tariffs of Local Exchange Carriers, *Memorandum Opinion and Order*, 12 FCC Rcd 7026, ¶ 242 (1997) (tentative Commission decisions are not final agency actions ripe for reconsideration).

23 See Ohio Commission Petition at 3 (Ohio Commission filed the petition to clarify the "important jurisdictional issues presented by CPP and . . . to preserve its right to pursue the jurisdictional issues on appeal, if necessary").

24 47 C.F.R. § 1.429(j).

B. The Commission Can And Should Preempt State Regulation Of CPP Notification Mechanisms.

Addressing the merits of the Ohio Commission's petition, CTIA believes that the Commission can and should preempt state regulation of CPP. As the Ohio Commission acknowledges, the Commission's conclusion that CPP is a CMRS service necessarily affects the role that states may play in regulating CPP offerings. Contrary to the Ohio Commission's assertions, state commissions clearly do not have concurrent jurisdiction over CPP customer notification mechanisms.

The Commission should reject the Ohio Commission's various arguments (1) that it was inappropriate for the Commission to reverse the Arizona Decision[25] (where the Commission concluded that CPP was properly subject to state regulation); (2) that CPP regulation constitutes "other terms and conditions" regulation such as consumer notification and billing issues, and not rate regulation; and (3) the related issue that the preemptive scope of Section 332 is generally narrow.[26]

The Ohio Commission has significantly misconstrued the Commission's discussion in the Notice of the Arizona Decision. In its declaratory ruling, the Commission overruled only one small part of the Arizona Decision. It overruled any inferences that it may have made previously that CPP was not CMRS.[27] Once again, the Ohio Commission assumes too much from the

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25 Petition of Arizona Corporation Commission to Extend State Authority over Rate and Entry Regulation of All Commercial Mobile Radio Services, *Report and Order and Order on Reconsideration*, 10 FCC Rcd 7824 (1995) ("Arizona Decision").

26 See Ohio Commission Petition at 10-17.

27 Notice at ¶¶ 18-19.

Commission's determination. Given the Commission's limited action to date, the Ohio Commission is wrong in accusing the Commission of "unilaterally amend[ing] Section 332 or alter[ing] the applicability of Federal court decisions" or otherwise misinterpreting Section 332.[28]

The Commission should not prejudge the remaining jurisdictional issues before the record is complete. Contrary to the Ohio Commission's assertions, CPP regulation does not implicate the "other terms and conditions" of CMRS, but rather rates and entry. As CTIA detailed in its Comments in this proceeding, Section 332 precludes all forms of state rate and entry regulation of CPP services. Therefore, to the extent that state adoption of differing notification methods affects rates and entry, it is prohibited. Alternatively, Section 2(b) provides a basis for the Commission to adopt a uniform, nationwide notification mechanism free of conflicting state regulation.

To summarize generally, with CPP, the notification mechanism acts as a form of market-based CMRS rate regulation.[29] In short, CPP notification mechanisms facilitate the market's

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[28] See Ohio Commission Petition at 11.

[29] As CTIA detailed in its Comments, rate regulation necessarily encompasses review of the method of notification that a carrier employs to communicate with potential and existing customers about the underlying rates that it charges for the use of its services. That is, rate regulation does not involve merely the setting of the rate, but, in addition, the regulation of the mechanisms used by carriers to notify consumers of the charges for various services. CTIA Comments at 11-16.

Moreover, contrary to the Ohio Commission's assertions, CTIA has not ignored the important distinction between Federal statutes that preempt state laws "'regulating rates'" such as Section 332 and Federal laws "'relating to rates.'" See Ohio Commission Petition at 13. Instead, CTIA relies upon basic principles of administrative law and the Ohio Commission's own assertions, id. at 16 ("rate-making, rate review, tariff regulation, [and] contract approval" are forms of rate regulation), that the rate notification mechanisms (such as tariff filing requirements) are inextricably linked to rate regulation.

ability to regulate CMRS rates. Given this, it is hard to square the Ohio Commission's argument that "the CPP consumer issues at issue in this docket do not even have an indirect impact on rates" because they involve "consumer notification and billing issues" with its conclusion that "CPP directly affects the rates paid by landline customers for calls that are local in nature."[30] Despite the Ohio Commission's best efforts, regulation of the CPP notification mechanism boils down to regulation of a CMRS carrier's rates. The Ohio Commission cannot regulate the rates paid by its landline ratepayers without impinging directly upon "the rates charged by" a CMRS carrier for CPP services. As Section 332 makes clear, such action is prohibited. By requiring caller notification, the Commission avoids having to set the specific rate in favor of market-based regulation that places downward pressure on the charges assessed for CPP calls.

Section 332 also bans state regulation of CPP to that extent that it operates as a barrier to entry. To illustrate, if a state adopts a particular notification method that is contrary to or different from the national, uniform notification standard, it would inappropriately impair a carrier's ability to offer efficient, cost-effective CPP service, or, even worse, may totally bar a carrier's provision of CPP in that state. Notably, the Ohio Commission does not analyze whether or not state CPP regulation may constitute prohibited entry regulation. Moreover, the Ohio Commission offers no response to the Commission's determination that the lack of a uniform, nationwide CPP notification method acts as a barrier to widespread CPP development.[31]

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30 Ohio Commission Petition at 15-16.

31 The Commission expressly "agree[d] with the commenters that a uniform nationwide notification system that would apply to all calls is necessary to facilitate the implementation of CPP." Notice at ¶ 33. The Commission also noted that based on the record, "such a notification would significantly alleviate confusion on the part of calling parties by providing them the capability to make an informed decision on whether to

Section 2(b) "impossibility" jurisprudence also serves to preempt inconsistent or additional state CPP customer notification requirements. Through operation of the impossibility exception, the Commission retains jurisdiction to ensure that inconsistent state regulation does not thwart uniformity of nationwide CPP notification mechanisms. In those situations in which Federal and state jurisdictions overlap, "state regulation will be displaced to the extent that it stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[32] As CTIA demonstrated in its Comments, concurrent state regulation of CPP notification mechanisms is impracticable, and therefore prohibited under the Section 2(b) the impossibility exception.

More generally, CTIA takes issue with the Ohio Commission's blanket categorization of the preemptive scope of Section 332(c)(3)(A) as limited. The Ohio Commission's characterization of the GTE Mobilnet[33] decision is improper. In GTE Mobilnet the Sixth Circuit was charged with reviewing a decision by a lower court finding that Section 332 facially preempted certain portions of a reseller's complaint from being heard by the Ohio Commission because the complaint involved issues of rate regulation. The underlying complaint was filed by

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proceed with completing the call. In addition, as several commenters submit, a uniform nationwide standard for notification announcement would likely minimize the cost to wireless carriers of providing a notification, especially where they service multistate areas." Id.

32 Louisiana Pub. Serv. Comm'n v. F.C.C., 476 U.S. 355, 374 (1986) (citations omitted); see also Computer and Communications Indus. Ass'n v. F.C.C., 693 F.2d 198, 214 (D.C. Cir. 1982) ("Courts have consistently held that when state regulation of intrastate equipment or facilities would interfere with achievement of a federal regulatory goal, the Commission's jurisdiction is paramount and conflicting state regulations must necessarily yield to the federal regulatory scheme.").

33 GTE Mobilnet of Ohio v. Johnson, 111 F.3d 469 (6th Cir. 1997) ("GTE Mobilnet").

an unaffiliated reseller against a cellular carrier alleging, among other things, discriminatory pricing of wholesale cellular services.[34] Concerned by the complexities associated with a preemption analysis of this sort under Section 332, the court found that it was unable to "determine [conclusively] whether the language of section 332 refers to simply setting rates or whether it refers to any type of adjustment to rates, no matter how indirect."[35] This case, though, cannot and should not be relied upon to claim conclusively that the preemptive scope of Section 332 is limited such that the states have concurrent jurisdiction over CPP. It certainly does not estop the Commission from preempting state regulation of CPP as improper rate regulation.

The Commission and the courts simply have not found that Section 332's preemptive scope is so limited that it cannot attach to state regulation of CPP notification mechanisms.[36] To the contrary,[37] the Commission generally and correctly has understood Section 332's preemptive scope to be broad. Specifically, in rejecting the Ohio Commission's petition to continue rate regulation, the Commission noted that Section 332(c)(3) "express[es] an unambiguous

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34 Id. at 472.

35 Id. at 478.

36 See Ohio Commission Petition at 12-13 (claiming that the fact that rate information is included in the notification does not remove state authority and that "existing Federal case law and prior FCC decisions also severely undercut that type of bootstrapping approach to preemption").

37 Citing Petition of the State of Ohio for Authority to Continue to Regulate Commercial Mobile Radio Services, *Report and Order*, 10 FCC Rcd. 7842 ¶ 9 (1995) ("Ohio Order"), the Ohio Commission has latched onto the Commission's acknowledgment that Congress' preference for market forces (as exemplified in Section 332) was not absolute, and that if Congress had decided to foreclose state regulation entirely it could have done so. The Ohio Commission merely states the obvious; the jurisdictional scope of Section 332 is not absolute. Nor does it need to be absolute to foreclose concurrent state jurisdiction over CPP.

congressional intent to foreclose state regulation in the first instance"[38] and that the Omnibus Budget Reconciliation Act ("OBRA")[39] "reflects a general preference in favor of reliance on market forces rather than regulation."[40] Simply stated, nothing in the Ohio Order would be at odds with an ultimate Commission conclusion that states are preempted from regulating CPP notification mechanisms as prohibited rate regulation.

Similarly, the Ohio Commission fails to acknowledge other court decisions that recognize the extensive reach of Section 332's preemptive authority. For example, in Connecticut Department of Public Util. Control v. F.C.C,[41] the court upheld the Commission's denial of a petition by a state public utility commission to continue state regulation of wholesale rates for cellular telephone service. The court found that Congress' intention in enacting OBRA was "to dramatically revise the regulation of the wireless telecommunications industry,"[42] and that "Congress provided a general preemption of state rate regulation" for CMRS.[43] In fact, the court noted the Commission's strong preference for competition over state regulation.[44]

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38 Ohio Order at ¶ 8.

39 Pub. L. No. 103-66, 107 Stat. 312 (1993). Among other things, the OBRA amended Section 332 to preempt inappropriate state regulation.

40 Ohio Order at ¶ 8.

41 78 F.3d 842, 845 (2d Cir. 1996).

42 Id.

43 Id. at 846 (emphasis added).

44 Id. (quoting Implementation of Section 3(n) and 332 of the Communications Act, *Second Report and Order*, 9 FCC Rcd 1411, 1421 (1994) ("'While we recognize that states have a legitimate interest in protecting the interests of telecommunications users in their jurisdictions, we also believe that competition is a strong protector of these interests and

CTIA finds the Ohio Commission's statement that "[i]t is not the rate being collected (either by a CMRS provider or a LEC) but the other terms and conditions of CPP that triggers regulatory consumer issues for State commissions"[45] to be both disingenuous and unpersuasive. If this were true, then CPP could be dealt with under the new "truth in billing" regulations with no need for additional regulatory oversight by either the Commission or the states.[46] In fact, though, the very reason that the Commission and the states are concerned about CPP has little to do with the recovery of CPP charges by CMRS providers. Regulators are concerned that callers will be charged excessive prices to complete calls to CMRS subscribers.[47] Unfortunately for the states, this concern over the charges associated with CPP calls is the undoing of their jurisdictional argument.

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that state regulation in this context could inadvertently become . . . a burden to the development of this competition.'")).

45 Ohio Commission Petition at 8.

46 Moreover, the Commission has exclusive jurisdiction over CPP (notwithstanding the reservation of authority to states over other terms and conditions of CMRS) under several theories of jurisdiction, namely Sections 2(b), 201, 253, and 332.

47 In recognition of this concern, CTIA has consistently supported the adoption of Federal regulations that establish a uniform, nationwide consumer notification mechanism that alerts callers that they will be charged to complete the call.

IV. CONCLUSION

For these reasons, CTIA respectfully requests that the Commission reject the Ohio Commission's petition for reconsideration and clarification, and uphold its declaratory ruling that CPP is CMRS.

Respectfully submitted,

CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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October 4, 1999

CERTIFICATE OF SERVICE

I, Michael F. Altschul, do hereby certify that on this 4th day of October 1999, copies of the foregoing Opposition to Petition for Reconsideration of The Cellular Telecommunications Industry Association were delivered first-class, postage prepaid mail as indicated to the following parties:

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